

HOUSE BILL NO. 379

INTRODUCED BY WINDY BOY, BERGREN, PEASE, GUTSCHE, HANSEN, HENRY, CAMPBELL, TOOLE,
HAMILTON, WANZENRIED, LAMBERT, MUSGROVE, CAFERRO, DICKENSON, MAEDJE,
SMALL-EASTMAN, WINDHAM, FRANKLIN, HINER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PERMANENT TRUST FUND FOR LONG-TERM
OR PERPETUAL WATER TREATMENT AT THE ZORTMAN AND LANDUSKY MINE SITES; REQUIRING A
TWO-THIRDS VOTE BY THE LEGISLATURE TO APPROPRIATE THE PRINCIPAL OF THE TRUST;
~~ALLOCATING A PORTION OF THE FEDERAL MINERAL LEASE AND ROYALTY INCOME PROCEEDS THAT
WERE DEDICATED TO THE ORPHAN SHARE ACCOUNT FROM THE RESOURCE INDEMNITY AND
GROUND WATER ASSESSMENT TAX PROCEEDS AND FROM THE DISTRIBUTION OF OIL AND GAS
PRODUCTION TAXES~~ DIRECTING THE TRANSFER OF FUNDS FROM THE ORPHAN SHARE ACCOUNT
TO THE PERMANENT TRUST FUND; AMENDING SECTION ~~17-3-240~~ ~~SECTIONS 15-36-331, 15-38-106, AND~~
~~SECTION 75-10-743~~, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Long-term or perpetual water treatment permanent trust fund. (1)

There is established a fund of the permanent fund type to pay exclusively for the cost to the state of long-term
or perpetual water treatment at the Zortman and Landusky mine sites.

(2) The fund is financed with:

(a) ~~money from the federal lease and royalty funds paid to the state as provided in 17-3-240; and FUNDS
ALLOCATED FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX PROCEEDS PROVIDED FOR IN
15-38-106;~~

~~(b) FUNDS RECEIVED FROM THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES PURSUANT TO
15-36-331~~ TRANSFERRED FROM THE ORPHAN SHARE ACCOUNT PURSUANT TO 75-10-743; AND

~~(b)(c)(B)~~ other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and
the earnings from the investment must be credited to the principal of the fund until the year 2018.

(4) The annual earnings on the fund for the year 2018 and for each succeeding year may be

appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may only be made for payment of the costs of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

~~Section 2. Section 17-3-240, MCA, is amended to read:~~

~~"17-3-240. Federal mineral leasing lease and royalty funds. (1) (a) All Except as provided in subsection (1)(b), the money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund and must be distributed as provided in subsections (2) and (3) subsection (2):~~

~~(b) (i) Except as provided in subsection (1)(b)(ii), beginning July 1, 2005, through July 1, 2018, \$1,485,000 each year of the money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the long-term or perpetual water treatment permanent trust fund provided for in [section 1].~~

~~(ii) If the money paid to the state pursuant to 30 U.S.C. 191 is insufficient to meet the annual funding requirement under subsection (1)(b)(i), then the state treasurer shall distribute 75% of the money paid to the state pursuant to 30 U.S.C. 191 to the long-term or perpetual water treatment permanent trust fund provided for in [section 1].~~

~~(2) At the conclusion of fiscal year 2002, the state treasurer shall distribute all money received in fiscal year 2002 in excess of \$21,756,000 pursuant to subsection (3). At the conclusion of fiscal year 2003, the state treasurer shall distribute all money received in fiscal year 2003 in excess of \$21,671,000 pursuant to subsection (3). At the conclusion of fiscal year 2004, the state treasurer shall distribute 12.5% of all money received pursuant to subsection (3). At the conclusion of fiscal year 2005 and each fiscal year thereafter, the state treasurer shall distribute 25% of all money received pursuant to subsection (3).~~

~~(3)(2) On August 15 following the close of the fiscal year, the state treasurer shall distribute the distributions in subsection (2) 25% of the money received pursuant to subsection (1) to the mineral impact account established in 17-3-241. The distribution to the eligible counties must be allocated based on the proportion that the total amount of revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state."~~

~~SECTION 2. SECTION 15-36-331, MCA, IS AMENDED TO READ:~~

~~"15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine~~

~~the amount of tax, late payment interest, and penalties collected under this part.~~

~~———— (b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.~~

~~———— (2) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.~~

~~———— (3) (a) For tax year 2003 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:~~

	2003	2004	2005	2006 and succeeding tax years
Big Horn	45.03%	45.04%	45.04%	45.05%
Blaine	57.56%	57.84%	58.11%	58.39%
Carbon	50.24%	49.59%	48.93%	48.27%
Chouteau	56.67%	57.16%	57.65%	58.14%
Custer	103.63%	92.27%	80.9%	69.53%
Daniels	48.31%	49.15%	49.98%	50.81%
Dawson	56.32%	53.48%	50.64%	47.79%
Fallon	39.89%	40.52%	41.15%	41.78%
Fergus	112.2%	97.86%	83.52%	69.18%
Garfield	54.51%	51.66%	48.81%	45.96%
Glacier	76.56%	70.65%	64.74%	58.83%
Golden Valley	55.5%	56.45%	57.41%	58.37%
Hill	66.97%	66.15%	65.33%	64.51%
Liberty	63.32%	61.53%	59.73%	57.94%
McCone	58.75%	55.81%	52.86%	49.92%
Musselshell	57.06%	54.25%	51.44%	48.64%
Petroleum	67.8%	61.21%	54.62%	48.04%

1	Phillips	53.3%	53.54%	53.78%	54.02%
2	Pondera	104.14%	87.51%	70.89%	54.26%
3	Powder River	64.7%	63.44%	62.17%	60.9%
4	Prairie	38.43%	39.08%	39.73%	40.38%
5	Richland	45.23%	45.97%	46.72%	47.47%
6	Roosevelt	46.75%	46.4%	46.06%	45.71%
7	Rosebud	37.41%	38.05%	38.69%	39.33%
8	Sheridan	46.64%	47.09%	47.54%	47.99%
9	Stillwater	56.05%	55.2%	54.35%	53.51%
10	Sweet Grass	58.23%	59.24%	60.24%	61.24%
11	Teton	53.01%	50.71%	48.4%	46.1%
12	Toole	56.2%	56.67%	57.14%	57.61%
13	Valley	59.82%	57.02%	54.22%	51.43%
14	Wibaux	47.71%	48.19%	48.68%	49.16%
15	Yellowstone	50.69%	49.37%	48.06%	46.74%
16	All other counties	50.15%	50.15%	50.15%	50.15%

17 ~~—— (b) The oil and natural gas production taxes allocated to each county must be deposited in the state~~
18 ~~special revenue fund and transferred to each county for distribution, as provided in 15-36-332.~~

19 ~~—— (4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of~~
20 ~~oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as~~
21 ~~follows:~~

22 ~~—— (a) for the fiscal year ending June 30, 2003, to be distributed as follows:~~

23 ~~—— (i) a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and~~

24 ~~—— (ii) all remaining proceeds to the state general fund;~~

25 ~~—— (b) for the fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2011, to be~~
26 ~~distributed as follows:~~

27 ~~—— (i) 1.23% to the coal bed methane protection account established in 76-15-904;~~

28 ~~—— (ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;~~

29 ~~—— (iii) 2.95% to the orphan share account established in 75-10-743 long term or perpetual water treatment~~
30 ~~permanent trust fund provided for in [section 1];~~

1 ~~—— (iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the~~
2 ~~purposes of the state tax levy as provided in 20-25-423; and~~
3 ~~—— (v) all remaining proceeds to the state general fund;~~
4 ~~—— (c) for fiscal years beginning after June 30, 2011, to be distributed as follows:~~
5 ~~—— (i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;~~
6 ~~—— (ii) 2.95% to the orphan share account established in 75-10-743 long term or perpetual water treatment~~
7 ~~permanent trust fund provided for in [section 1];~~
8 ~~—— (iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the~~
9 ~~purposes of the state tax levy as provided in 20-25-423; and~~
10 ~~—— (iv) all remaining proceeds to the state general fund."~~
11

12 ~~—— **SECTION 3. SECTION 15-38-106, MCA, IS AMENDED TO READ:**~~

13 ~~—— **"15-38-106. (Temporary) Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax~~
14 ~~imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the~~
15 ~~value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the~~
16 ~~department at the time that the statement of yield for the preceding calendar year is filed with the department.~~
17 ~~—— (2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:~~
18 ~~—— (a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund~~
19 ~~provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after~~
20 ~~crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account~~
21 ~~established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on~~
22 ~~bonds or notes issued pursuant to 75-10-623;~~
23 ~~—— (b) \$366,000 of the proceeds of the resource indemnity and ground water assessment taxes in the~~
24 ~~ground water assessment account established by 85-2-905;~~
25 ~~—— (c) 50% of the remaining proceeds in the reclamation and development grants account established by~~
26 ~~90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;~~
27 ~~—— (d) \$150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes~~
28 ~~in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year~~
29 ~~following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund~~
30 ~~balance has reached \$100 million and for succeeding fiscal years, the amount required under 39-10-106(4);~~

~~———— (e) all remaining proceeds in the orphan share account established in 75-10-743 long-term or perpetual water treatment permanent trust fund provided for in [section 1].~~

~~———— (3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.~~

~~———— (4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007--sec. 10, Ch. 586, L. 2004.)~~

~~———— **15-38-106. (Effective July 1, 2007) Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.~~

~~———— (2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:~~

~~———— (a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;~~

~~———— (b) \$366,000 of the proceeds in the ground water assessment account established by 85-2-905;~~

~~———— (c) 50% of the remaining proceeds in the orphan share account established in 75-10-743 long-term or perpetual water treatment permanent trust fund provided for in [section 1]; and~~

~~———— (d) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.~~

~~———— (3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.~~

~~———— (4) The department shall examine the statement and compute the taxes to be imposed, and the amount~~

computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

SECTION 2. SECTION 75-10-743, MCA, IS AMENDED TO READ:

"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, EXCEPT AS PROVIDED IN SUBSECTIONS (10) AND (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, ~~except as provided in subsection (10),~~ to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

~~(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;~~

~~—— (d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;~~

(C) FUNDS ALLOCATED FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX PROCEEDS PROVIDED FOR IN 15-38-106;

(D) FUNDS RECEIVED FROM THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES PURSUANT TO 15-36-331;

~~(e)(c)(E)~~ unencumbered funds remaining in the abandoned mines state special revenue account;

~~(f)(d)(F)~~ interest income on the account;

~~(g)(e)(G)~~ funds received from settlements pursuant to 75-10-719(7); and

~~(h)(f)(H)~~ funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient

1 money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan
2 share fund, the department, and the state are not liable for making any reimbursement for the costs. The
3 department and the state are not liable for any penalties if the orphan share fund does not contain sufficient
4 money to reimburse claims, and interest may not accrue on outstanding claims.

5 (4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may
6 not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance,
7 are completed at a facility.

8 (5) Reimbursement from the orphan share fund must be limited to actual documented remedial action
9 costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for
10 attorney fees, legal costs, or operation and maintenance costs.

11 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
12 participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The
13 orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share
14 in proportion to the orphan share's allocated share, as follows:

15 (i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending
16 the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the
17 orphan share.

18 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation
19 under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs
20 incurred in defending the orphan share in proportion to each person's allocated share of liability.

21 (b) A person who pays the orphan share's proportional share of costs has a claim against the orphan
22 share fund and must be reimbursed as provided in subsection (3).

23 (7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be
24 transferred to the general fund.

25 (8) If the lead liable person under 75-10-746 presents evidence to the department that the person
26 cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will
27 cause undue financial hardship on the person, the department may allow the submission of claims and may
28 reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early
29 reimbursement unless the person is in substantial compliance with all department-approved remedial action
30 plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(10) For the biennium beginning July 1, 2003, and subject to the provisions of section 4, Chapter 199, Laws of 2003, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.

(11) (A) BEGINNING IN THE FISCAL YEAR THAT COMMENCES JULY 1, 2005, THE DEPARTMENT SHALL TRANSFER FROM THE ORPHAN SHARE ACCOUNT TO THE LONG-TERM OR PERPETUAL WATER TREATMENT PERMANENT TRUST FUND PROVIDED FOR IN [SECTION 1] \$1.2 MILLION IN EACH FISCAL YEAR UNTIL THE BOARD OF INVESTMENTS MAKES THE CERTIFICATION PURSUANT TO SUBSECTION (11)(B) OF THIS SECTION.

(B) (i) THE BOARD OF INVESTMENTS SHALL MONITOR THE LONG-TERM OR PERPETUAL WATER TREATMENT PERMANENT TRUST FUND PROVIDED FOR IN [SECTION 1] TO DETERMINE WHEN THE AMOUNT OF MONEY IN THE LONG-TERM OR PERPETUAL WATER TREATMENT PERMANENT TRUST FUND WILL BE SUFFICIENT, WITH FUTURE EARNINGS, TO PROVIDE A FUND BALANCE OF \$19.3 MILLION ON JANUARY 1, 2018.

(ii) WHEN THE BOARD OF INVESTMENTS MAKES THE DETERMINATION, PURSUANT TO SUBSECTION (11)(B)(i), THE BOARD OF INVESTMENTS SHALL NOTIFY THE DEPARTMENT AND CERTIFY TO THE DEPARTMENT THE AMOUNT OF MONEY, IF ANY, THAT MUST BE TRANSFERRED DURING THE FISCAL YEAR IN WHICH THE BOARD OF INVESTMENTS MAKES ITS DETERMINATION, PURSUANT TO SUBSECTION (11)(B)(i), IN ORDER TO PROVIDE A FUND BALANCE OF \$19.3 MILLION ON JANUARY 1, 2018.

(iii) IN THE FISCAL YEAR THAT THE BOARD OF INVESTMENTS MAKES ITS DETERMINATION AND NOTIFIES THE DEPARTMENT, THE DEPARTMENT SHALL TRANSFER ONLY THE AMOUNT CERTIFIED BY THE BOARD OF INVESTMENTS, IF ANY, AND MAY NOT MAKE ADDITIONAL TRANSFERS DURING SUBSEQUENT FISCAL YEARS."

NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 1].

NEW SECTION. Section 4. Notification to tribal government. The secretary of state shall send a copy of [this act] to the Fort Belknap tribal government.

3 - END -